

Results of Companies Act 2006 Evaluation Published

Introduction

In November 2009, ORC International were commissioned by the Department of Business, Innovation and Skills to conduct an evaluation of the Companies Act 2006 (the “Act”). The overarching aim was to assess:

- the impact of the Act on business; and
- whether the Act was meeting its key policy objectives.

Their report was published on 22 December 2009 and suggests that the Act has been a qualified success. Although it is too early to form a definitive view, there is evidence of companies enjoying real practical benefits as a result of the Act. Equally, there are numbers of areas identified where further progress is required – in particular, many smaller private companies are unaware of the recent changes.

Impact on business

Most companies who took part in the evaluation were aware of the introduction of the Act. The percentage was higher amongst larger (particularly quoted) companies.

More generally, the impact differed between different size companies. As one might expect, adoption of measures as a result of the Act was more prevalent in larger companies with internal legal resources who did not rely on external advisors.

There were some measures which had been adopted by a majority of the companies surveyed (for example, no longer filing directors’ residential addresses at Companies House). However, over half the small private companies surveyed had made no changes whatsoever.

For those companies which had made changes, the most common were dispensing with the need to hold an AGM, and executing documents through a sole director.

Evaluating policy objectives

The Act had three main policy objectives, which the report commented on as follows:

1. Enhancing shareholder engagement and a long term investment culture
The Act had paved the way for shareholder engagement to be enhanced, but this goal had not yet been fully realised. In particular, attainment of this objective

required more active engagement from stakeholders, rather than solely legislative change.

2. Ensuring better regulation and a “think small first” approach
The Act has simplified the law for small and medium sized private companies. However there is a general lack of awareness and adoption of the potential benefits in this area, particularly for smaller companies who rely on external advisors for legal advice.
3. Making it easier to set up and run a company
In principle the changes under the Act do appear to have made the process of setting up and running a company more straightforward, although the responses to the ORC survey suggested that companies and stakeholders were relatively neutral about the benefits of this.

More generally, the report noted that in evaluating the Act’s attainment of the key policy objectives:

- A note of caution was required given the final implementation of the Act only took place in October 2009. It was too early for a full assessment.
- The majority of provisions in the Act were enabling provisions, i.e. it was up to companies to take positive action to adopt / take advantage of the changes. The policy objectives could not be obtained through legislative change alone.

Potential areas for change

The report also identified from feedback received certain key areas where further change should be considered. These included:

- added clarity and guidance on the new directors’ duties provisions;
- further changes in the rules relating to directors addresses, particularly to ensure that previous residential addresses are blocked off the register at Companies House; and
- greater promotion of the benefits of the Act and the simplifications for small private companies, particularly in taking up the new model articles.

Full Report

The full report issued by ORC can be accessed here:

<http://www.bis.gov.uk/assets/biscore/business-law/docs/e/10-1362-evaluation-companies-act-2006-executive-summary.pdf>

<http://www.bis.gov.uk/assets/biscore/business-law/docs/e/10-1360-evaluation-companies-act-2006-volume-1.pdf>

<http://www.bis.gov.uk/assets/biscore/business-law/docs/e/10-1361-evaluation-companies-act-2006-volume-2.pdf>

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